

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MICHAEL WAYNE PERRY,

Petitioner,

v.

DAVID MILLS, WARDEN,

Respondent.

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No. 3:09mc0152

Judge Campbell

ORDER

The petitioner, proceeding *pro se*, brings this action seeking federal *habeas corpus* relief under 28 U.S.C. § 2254. The petitioner has filed an application to proceed *in forma pauperis*. (Docket Entry No. 2)

It appears from the petitioner's application to proceed *in forma pauperis* that he is unable to pay the five dollar (\$5.00) filing fee. Therefore, the Clerk shall **FILE** the petition *in forma pauperis*. 28 U.S.C. § 1915(a).

Under Rule 4, Rules – Section 2254 Cases, the Court is required to examine § 2254 petitions to ascertain as a preliminary matter whether “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” If on the face of the petition it appears that the petitioner is not entitled to *habeas corpus* relief, then the “the judge must dismiss the petition” *Id.*

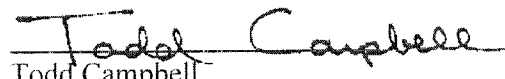
For the reasons explained in the accompanying memorandum, the petition is **DISMISSED** as time barred. Rule 4, Rules – § 2254 Cases. The petitioner's motions for a hearing on the merits and appointment of counsel (Docket Entry No. 3-4) are **DENIED** as moot.

An appeal from the judgment would **NOT** be taken in good faith. Therefore, the petitioner

is **NOT** certified to proceed on appeal *in forma pauperis*. 28 U.S.C. § 1915(a)(3). Moreover, should the petitioner file a notice of appeal, such notice shall be docketed as both a notice of appeal and an application for a certificate of appealability, *Slack*, 529 U.S. at 483; Rule 22(b), Fed. R. App. P., which will **NOT** issue, *see* 28 U.S.C. § 2253(c)(2); *Castro v. United States of America*, 310 F.3d 900, 901 (6th Cir. 2002)(citing *Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1072 (6th Cir. 1997) and *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001)).

Entry of this order shall constitute the judgment in this action.

It is so **ORDERED**.


Todd Campbell
United States District Judge